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Commonwealth of Massachusetts
Department of Consumer Affairs & Business Regulation

Cable Television Commission

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EXECUTIVE SUMMARY


August 9, 1996

Advisory Opinion on Conflicts of Interest Arising out of Membership on a Cable Advisory Committee

Competition for video services offers the long-awaited potential for greater consumer choice and improved access to technologically innovative, high quality offerings at increasingly competitive rates. These undeniably positive developments also raise some thorny issues in connection with the Massachusetts conflict of interest law, M.G.L. c. 268A. As competition increases, municipalities will need to be increasingly sensitive to the legal restrictions on CAC members regarding their relationships with licensees and competitors who, while not directly involved in the licensing process, may have an interest in the timing, direction and outcome of that process.

In response both to these market developments and a specific request from New England Cable Television Association, the Commission today is issuing an Advisory Opinion on the subject of potential conflicts of interest faced by members of municipal cable advisory committees ("CAC"). The Opinion is guided by c. 268A, which prohibits certain financial relationships between municipal officials -- including CAC members -- and cable licensees or other parties with a financial interest in the licensing process. The Opinion offers *general* guidelines designed to assist municipalities and CAC's with conflict of interest problems as they face the new competitive environment.

The text of the Advisory Opinion offers more detailed legal analysis and explanation



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of the following findings:

- Under sections 19 and 20 of the conflict of interest law, CAC members may not knowingly participate in matters, such as licensing or renewal proceedings, if they, their immediate family or others with whom they have business dealings, have a financial interest in those proceedings. Violation of either section may result in criminal penalties. pp. 3-4.
- If a CAC member is employed by, or otherwise conducts business with, a pending applicant for a cable franchise, that member is prohibited under sections 19 and 20 from participating in any CAC matters concerning the applicant. p. 6.
- Sections 19 and 20 also prohibit certain financial relationships between CAC members and third parties -- such as Direct-to-home satellite providers and other current non-cable video providers -- who, while not subject to the franchising process, have a financial stake in its outcome. 6-7.
- Under sections 19 and 20, CAC members may not enter into or maintain existing financial relationships with third parties who, while not currently offering video services in the franchise area, have applied to do so. For example, a CAC member could not participate in a license renewal process while maintaining a financial relationship with a competing cable operator, if the competitor applied for a second cable license in the franchise area. p. 7.
- Violations of sections 19 and 20 could also result from a member's financial dealings with non-cable video providers once those providers *applied* to offer competing services in the franchise area. Upon approval by the FCC, local exchange carriers may provide wireless cable services on a local or regional basis, or wired cable service in their telephone service areas through so-called "open video systems." Likewise, it also appears that public utilities, such as electric companies, may offer competitive local video services once they have received prior approval to do so from the FCC. In each of these cases, a conflict would arise once the entrants *sought* FCC approval to offer such services in all or any part of a franchise area. pp. 7-8.
- In addition to the criminal prohibitions contained in sections 19 and 20, § 23 provides standards of conduct for avoiding "appearances" of conflicts of interest created when a public employee's financial interests or relationships overlap with the employee's public duties. In accordance with section 23, CAC members should avoid financial relationships with any business the member has reason to believe is planning to offer competing video services in the franchise area, regardless of whether the business is currently offering, or has applied to offer, such services. pp. 9-10.

- While some relationships may be too remote to trigger a violation of c. 268A, § 20(a), it is also a conflict of interest under this section for a CAC member or an immediate family member to do direct business as a vendor to, or significant investor in, franchise applicants or others with a financial interest in a pending licensing process. CAC members remain free to invest indirectly in franchise applicants or their local competitors through mutual funds or other investment vehicles which are actively managed by third parties. pp. 10-11.
- While c. 268A generally prohibits conflicting business relationships between municipal employees and third parties which run *concurrent* with the municipal employee's public tenure, the law does allow CAC members who *previously* had such business relationships to fully participate in licensing or renewal proceedings. p. 11.

Many, if not most, potential conflict of interest questions should be addressed on a case-by-case basis, resulting in a legal opinion tailored to the specific facts at issue. In such instances, the Commission recommends that CAC members and other representatives of issuing authorities consult with their counsel in accordance with M.G.L. c. 268A, § 22. The Commission will continue to provide assistance to municipalities with respect to these issues, but will also not hesitate to refer matters to the State Ethics Commission as appropriate.



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ADVISORY OPINION

August 9, 1996

CONFLICTS OF INTEREST ARISING OUT OF MEMBERSHIP ON A CABLE ADVISORY COMMITTEE

On March 25, 1996, New England Cable Television Association, Inc. ("NECTA") requested an Advisory Opinion from the Commission on the general issue of conflicts of interest in connection with membership on a municipal cable advisory committee ("CAC"). The Commission hereby issues the following Advisory Opinion in response to that request.

I. The Role of the CAC in the Licensing Process

Under Massachusetts law, an issuing authority may appoint a CAC and define its duties.¹ A CAC does not have independent power to make a final decision on the award of a cable television franchise to a particular cable operator. Typically, however, a CAC has a great deal of influence on the licensing decisions of the issuing authority to whom it provides input and advice, including decisions as to whether and to whom it grants or renews a license.

The Commission provides advice to CAC members on a variety of issues, including general information pertaining to the cable television licensing process. The Commission is empowered to investigate any aspect of this process and may, after a hearing, modify, suspend, revoke or cancel a license for cause.² We also hear appeals

¹ 207 Code of Massachusetts Regulations §§ 3.02(6) and 8.03(5).

² c. 166A, § 14.

on, among other things, the denial of an application for an initial or renewal license.³ In carrying out these and other functions relating to the licensing process, the Commission seeks to ensure that the integrity and independence of that process is strictly maintained.

In responding to NECTA's request, the Commission has determined that it may be particularly helpful at this juncture to offer CAC members who may be faced with potential conflict of interest questions some general guidance in the form of an Advisory Opinion. We have made this determination for three reasons. First, NECTA's general request touched on a number of important conflict of interest issues which have not been recently addressed by the Commission. Second, over the years, we have received a number of more specific requests from CAC members and others regarding potential conflicts of interest. Third, and perhaps most important, we believe that the issue will become both more prevalent and more complex as new providers enter the video service market.

The Commission is authorized to issue this Advisory Opinion in accordance with M.G.L. c. 30A, § 8; c. 166A, § 16 and 207 CMR § 2.09.

II. Competition and its Potential Impact on the Licensing Process

The passage of the Telecommunications Act of 1996 provides a host of opportunities for new competitive forces both within and without the cable television industry. The Commission recognizes that it is difficult to predict the pace and direction of this competition. Nonetheless, as a result of technological, legal and regulatory changes, citizens of Massachusetts communities which were once the nearly exclusive video services domain of traditional cable franchisees are beginning to have the choice of alternative services offered by new and varied video providers.

This competition may come from a variety of sources. Alternative video services are already being offered in Massachusetts communities by satellite broadcast programmers. Local utility providers, such as electric companies and local exchange carriers, may elect to distribute video programming across pre-existing telephone or utility lines. Competitive video services may also be offered by so-called wireless systems. Long distance telephone companies may enter the local video market. Finally, in the future, competitive video services may come from sources or as a result of technologies which do not yet even exist.

³ *Id.*

With the advent of these and other non-traditional video service options, the sharp technical and regulatory distinctions which historically defined the video market will become blurred. It is anticipated that non-cable video providers will soon be offering broadly comparable video services, targeted to overlapping or the same local and regional markets currently served by their cable counterparts. Consequently, CAC members and others who provide official advice to issuing authorities in connection with cable licensing should recognize that parties other than the municipality and the license applicant(s) may have a direct competitive interest in the local licensing process.

As competition develops, CAC members need to be especially mindful of *potential* conflict of interest issues. Currently, non-cable video providers are subject to neither the municipal franchising process nor, at this juncture, any other regulatory approval process directly comparable to cable franchising. Given the different regulatory treatment accorded cable and non-cable providers, alternative video providers may have a competitive interest in delaying or prohibiting a cable operator's efforts to acquire or renew a cable license. **It is therefore particularly important that CAC members refrain from financial relationships with such competitors which present conflicts of interest in connection with their role in the licensing process.**

Finally, while non-cable market entrants may pose significant new conflict of interest issues for CAC members, this Advisory Opinion -- and the conflict of interest law on which it is largely based -- applies to conflict of interest questions arising out of relationships between CAC members and traditional cable operators as well.

III. The Conflict of Interest Law

It is well-settled that CAC members, while typically uncompensated, are deemed to be "municipal employees," subject to the provisions of the Massachusetts conflict of interest law.⁴ That law, M.G.L. c. 268A, contains three separate sections prohibiting relationships between CAC members and third parties which may pose conflicts of interest for members participating in an initial licensing or renewal process.

The first prohibition is found in M.G.L. c. 268A, § 19, which provides, in pertinent part, as follows:

(a) Except as permitted by paragraph (b), a municipal employee who

⁴ M.G.L. c. 268A, § 1(g); *see also*, the Massachusetts State Ethics Commission's January 18, 1995 Conflict of Interest Opinion EC-COI-95-1 at page 2, footnote 1.

participates as such an employee in a particular matter in which to his knowledge he, his immediate family⁵ or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest, shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both.⁶

Second, c. 268A, § 20(a) provides the same criminal penalties if "[a] municipal employee...has a financial interest, *directly or indirectly*, in a *contract*⁷ made by a municipal agency of the same city or town, in which the city or town is an interested party of which financial interest he has knowledge or reason to know..." (Emphasis added.)⁸

Third, while it does not provide any specific criminal or civil penalties, §23 of the statute sets out certain "standards of conduct" for municipal employees.⁹ Section 23(b) prohibits municipal employees from knowingly engaging in the following: (1) other employment involving substantial compensation which is "inherently incompatible" with the responsibilities of the public employee's office; (2) use of a

⁵ "Immediate family" is defined by M.G.L. c. 268A, §1(e) as "the employee and his spouse, and their parents, children, brothers and sisters."

⁶ M.G.L. c. 268A, § 19(a). Note that section 19(b) contains two important exceptions to the provisions quoted above. First, no violation occurs "if the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee." A second exception applies "if the particular matter involves a determination of general policy and the interest of the municipal employ or members of his immediate family is shared with a substantial segment of the population of the municipality."

⁷ This would include a cable television franchise license.

⁸ Note that § 20(a) does not apply if (a) the "financial interest" consists of less than one percent of the stock of a corporation; or if (b) within 30 days after the employee learns of a violation, the employee makes full disclosure of the financial interest to the contracting agency and terminates the interest.

⁹ M.G.L. c. 268A, § 23(a).

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
JANUARY 1964

TO THE HONORABLE CHAIRMAN OF THE BOARD OF TRUSTEES
OF THE UNIVERSITY OF CHICAGO

FROM THE DEPARTMENT OF CHEMISTRY
AND THE FACULTY OF THE UNIVERSITY OF CHICAGO

WE HEREBY CERTIFY THAT THE ABOVE NAMED
PERSONS ARE THE MEMBERS OF THE
FACULTY OF THE UNIVERSITY OF CHICAGO

AND THAT THEY HAVE REVIEWED AND
APPROVED THE ABOVE NAMED PERSONS
FOR THE POSITION OF
PROFESSOR OF CHEMISTRY

AND THAT THEY HAVE AGREED TO
RECOMMEND THE ABOVE NAMED PERSONS
FOR THE POSITION OF
PROFESSOR OF CHEMISTRY

public position to secure privileges or exemptions which are of "substantial value"¹⁰ and which are not available to similarly situated persons; or (3) actions causing a reasonable and informed person to conclude that one can improperly influence or unduly enjoy the public employee's favor in the performance of his official duties.¹¹

Section 23(c) prohibits municipal employees from knowingly: (1) engaging in any business or professional activity which will require the disclosure of confidential information gained by reason of the employee's public position; or (2) improperly disclosing confidential materials acquired in the course of the employee's public duties, or using such information to further the employee's personal interest.

IV. CAC Membership and Potential Conflict of Interest Issues

As a general rule, the Commission advises CAC members to carefully consider all financial interests which may violate provisions of the conflict of interest law, regardless of how remote they may at first glance appear to be. Should questions or concerns arise with respect to specific situations, the Commission strongly recommends that such concerns be promptly brought to the attention of the issuing authority's attorney.¹² The Commission nonetheless believes it may be helpful to offer some *general* guidelines pertinent to potential conflicts of interest faced by CAC members.

A. *Relationships with Cable Franchisees*

Under c. 268A, §§ 19 and 20, CAC members may not knowingly participate in matters, such as licensing or renewal proceedings, if they, their immediate family or

¹⁰ "Substantial value" has been set at \$50 or more by the courts and the State Ethics Commission.

¹¹ Note that § 23(b)(3) exempts from the so-called "appearance of impropriety" standard provided in that sub-part an employee who publicly discloses "the facts which would otherwise lead to such a conclusion."

¹² Under c. 268A, § 22, a municipal employee may confidentially request and is entitled to obtain a written legal opinion from municipal counsel addressing questions arising under the conflict of interest law. Once issued, however, the legal opinion becomes a public record.

THE UNIVERSITY OF CHICAGO
DIVISION OF THE PHYSICAL SCIENCES
DEPARTMENT OF CHEMISTRY

REPORT OF THE
COMMISSIONER OF THE
BUREAU OF CHEMISTRY
FOR THE YEAR 1904

CHICAGO
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1905

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others with whom they have current business dealings, including prospective employment negotiations, have a financial interest in those proceedings. As a matter of law, if a CAC member is employed by, or otherwise conducts business with, a pending applicant for a cable franchise, that member is prohibited from participating in any CAC matters concerning the applicant.

B. Relationships with Potential Competitors

Competition for video services offers the long-awaited potential for greater consumer choice and improved access to technologically innovative, high quality offerings at increasingly competitive rates. These undeniably positive developments also raise some thorny issues in connection with the conflict of interest law. As competition increases, municipalities will need to be increasingly sensitive to potential conflicts of interest of CAC members arising out of their relationships with businesses which, while not directly involved in the licensing process, may have an interest in the timing, direction and outcome of that process.

Under c. 268A, there are two distinct legal standards applicable to conflict of interest issues pertinent to CAC members involved in these relationships. CAC members and other municipal representatives should carefully consider both of these standards, discussed separately below, when considering conflict questions.

1. Statutory Prohibitions Imposing Criminal Penalties

As is discussed further in section III, above, sections 19 and 20 of the law essentially bar CAC members and other municipal employees who participate in the licensing process from engaging in financial relationships with interested third parties. Violation of either section may result in criminal sanctions.

Sections 19 and 20 prohibit financial ties between a CAC member providing advice on a cable franchise application and a business which is already offering some form of video service in the franchise area, but is not directly involved in the franchising process. An example would be a relationship between a CAC member and a Direct-to-home ("DTH") satellite provider serving subscribers within the franchise area. DTH satellite services would include both direct broadcast satellite ("DBS") services offered by companies such as DIRECTV, United States Satellite Broadcasting Company, Inc. and Primestar Partners, L.P. and services provided on larger home satellite dishes.

Since these providers are currently marketing video services to Massachusetts

subscribers, they have a financial interest in the outcome of pending licensing processes in the communities they serve. Consequently, any CAC member with financial ties to providers marketing competing video services in the franchise area -- regardless of how aggressively the services are marketed or to whom they are sold -- would appear to be prohibited from participating in any CAC matters pertaining to the competing cable applicant under sections 19 and 20.

A different issue is posed by a CAC member who, while involved in a franchise application or renewal process, engages in a business relationship with a third party who is *not* currently offering video service in the franchise area. Ordinarily, such a relationship would not violate either sections 19 or 20 of c. 268A. However, conflict questions would arise if the third party had both the interest and the ability to offer local video services.

Competing cable operators could offer so-called overbuild cable services, but given the lack of overbuild activity to date, the Commission believes that a cable operator's intent to do so under sections 19 and 20 should only be inferred once it actually applies for the second cable franchise license in a given community. At that point, a conflict would occur under sections 19 and 20.

CAC members may more likely be faced with conflict of interest issues arising out of relationships with non-traditional video service providers who, while not offering competing local video services, appear to have an interest in doing so. In such cases, conflicts under sections 19 and 20 would be triggered when a provider applies for a local cable franchise. But not all new market entrants need obtain cable licenses in order to offer local video services. Under the 1996 Telecommunications Act, a local exchange carrier may provide cable service in its local telephone service area through a so-called "open video system," which must be pre-certified by the Federal Communications Commission.¹³ Similarly, FCC approval -- but not a municipal cable franchise -- is required to offer wireless cable services on a local or regional basis. In both cases, a conflict would arise once the entrants *sought* FCC approval to offer competing video services in all or any part of a franchise area.

By virtue of the wired facilities they already bring into the homes of thousands of Massachusetts residents, both municipal light departments and electric companies -- such as Boston Edison¹⁴ -- are potential competitors to cable operators within the

¹³ The Communications Act of 1934, as amended, § 653.

¹⁴ Section 103 of the Telecommunications Act of 1996 adds new section 34 to the Public Utility Holding Company Act of 1935, permitting expedited entry of public utility holding companies into the telecommunications industry. In its April 25, 1996

communities they serve. Two electric light departments -- in Russell and Shrewsbury -- already hold cable franchises, in addition to offering traditional electric or gas utility services.¹⁵ While these departments are local public entities,¹⁶ they are also potential cable franchisees. As such, relationships between CAC members and electric light departments or other public utilities which have applied to offer video services within the applicable franchise area would be prohibited under sections 19 and 20 of the conflict law.

Significantly, there has also been a great deal of recent speculation about potential wireless cable services to be offered by NYNEX in Eastern Massachusetts. We are advised that a NYNEX affiliate has obtained approval from the FCC to offer wireless cable service in the Boston metropolitan area. Again, financial relationships between participating CAC members and potential market entrants such as telephone companies would be prohibited under sections 19 and 20 of the conflict of interest law once the potential competitor *applied* to any of the appropriate local, state or federal regulators to offer video services within a given franchise area, regardless of whether the applicant was actually offering those services.

Finally, where no public review process -- whether federal, state or local -- is required in order to offer video service within a franchise area, as in the case of DBS services, no conflict would arise under sections 19 or 20 unless or until the competing provider began to market or offer its services to persons within the franchise area.

Notice of Proposed Rulemaking, the FCC established a simple procedure for utility companies to enter the industry by acquiring "exempt telecommunications company" ("ETC") status. ETC status is effective once a filing is made with the FCC, but the FCC has 60 days thereafter to make a determination on the filing.

¹⁵ There are currently a total of 40 municipalities with municipal light departments, including Ashburnham, Belmont, Boylston, Braintree, Chester, Chicopee, Concord, Danvers, Georgetown, Groton, Groveland, Hingham, Holden, Holyoke, Hudson, Hull, Ipswich, Littleton, Mansfield, Marblehead, Merrimac, Middleborough, Middleton, North Attleborough, Norwood, Paxton, Peabody, Princeton, Reading, Rowley, Russell, Shrewsbury, South Hadley, Sterling, Taunton, Templeton, Wakefield, Wellesley, West Boylston and Westfield.

¹⁶ The Ethics Commission has *informally* advised us that c. 268A would probably apply to relationships between public officials and other public entities -- in this case, municipally-owned utilities -- to the extent that the relationship divided the loyalties of the public official between the official's specific public role, i.e., evaluating a cable franchisee, and the official's financial ties, be they employment-related or otherwise, to another public entity.

2. Statutory Provisions Providing "Standards of Conduct"

Section 23 of the conflict of interest law, discussed in more detail in section III above, provides standards of conduct for avoiding "appearances" of conflicts of interest. Such appearances are often created when a public employee's financial interests or relationships overlap with the employee's public duties. The section provides a general code of ethics for public employees, including CAC members, faced with this overlap of private interests and official responsibilities. The Commission recommends that municipalities concerned with maintaining a public work force reflecting consistently high ethical standards carefully consider the broader provisions of this section of the law as well. **In accordance with § 23, CAC members should refrain from becoming involved in, or promptly withdraw from, financial relationships with any business which the member has reason to believe is planning to offer competing video services in the franchise area in which he serves, regardless of whether the business is currently offering, or has applied to offer, such services.**

Assume, for example, that a CAC member working for Boston Edison learns that the company is planning to offer video service in the community for which he serves as a CAC member, though it has not yet applied to do so. Likewise, assume a CAC member who is employed by a cable operator is informed that the operator is considering an overbuild in the community served by the member. In both instances, we believe the member's employment relationship would raise important conflict issues under section 23.

First, under section 23(b)(1), a serious question arises as to whether the member's financial ties to the potential competitor become "inherently incompatible" with the member's fair and impartial participation in the licensing process once the member learns of the competitor's plans to directly compete against the franchisee.

Second, a CAC member's knowledge of such business plans could trigger a violation of section 23(b)(3) if an observer, having been informed of all relevant facts, could reasonably conclude that the member's dual roles as CAC member and employee of a potential competitor expose the member to "improper influence" in the handling of CAC affairs.

Third, conflict issues arise under section 23(c) with respect to information obtained during the course of the licensing process. Section 23(c)(1) prohibits CAC members from engaging in business activities which require the member to disclose confidential information obtained during that process. Section 23(c)(2) prohibits members from using such information to further their personal interests. Providers who are considering entry into a franchise area would appear to have a direct interest in

acquiring proprietary business planning and financial information from franchise holders or applicants. While such information will usually fall within the public realm,¹⁷ its disclosure is often prompted by requests from CAC members. It is essential that CAC's are free to seek out all information necessary to make informed licensing decisions in the best interests of the franchising authority. But it is also essential that their members are free from conflicting interests or motives which may cause them to request information which, while not directly pertinent to the licensing process, may unfairly benefit competitors who acquire proprietary information provided in response to such requests.

C. Vendors and Other Parties with Financial Interests

It is also a conflict of interest for a CAC member or an immediate family member to do direct business as a vendor to, or significant investor¹⁸ in, franchise applicants or others with a financial interest in a pending licensing process. If, for example, a CAC member was employed as a sales manager for a company which manufactured and sold microwave equipment and services to a cable franchise applicant, he would probably be legally prohibited from participating in the license proceedings under c. 268A, § 20(a).¹⁹ The same analysis would hold true if a vendor supplied a local competitor to the applicant, such as a DBS provider.

Some vendor or investment relationships may be too remote to trigger a violation of c. 268A, § 20(a). Assume, for example, that a CAC member sold only telephone switching equipment to AT&T, and that DIRECTV, an AT&T subsidiary, offered competitive DBS services in the franchise area. Given the remote link between the member's financial interest in selling phone equipment to a national long distance

¹⁷ A CAC is a "governmental body" as defined by M.G.L. c. 39, § 23A, and would therefore be governed by the provisions of the open meeting laws. M.G.L. c. 39, §§ 23A, 23B and 23C. Additionally, materials submitted by cable franchise applicants in response to franchising authority requests during the licensing or renewal process are usually held to be public records. M.G.L. c. 4, § 7(26).

¹⁸ As noted in the previous section, c. 268A, § 20(a) defines such an investment as ownership of at least one percent of the stock of the cable operator or other interested video service provider.

¹⁹ In order to avoid criminal penalties under section 20(a), a CAC member who has a known direct or indirect financial interest in the issuance of a cable license must fully disclose this interest and terminate it within 30 days after learning of the violation.

telephone carrier and the competitive interest of DIRECTV in the cable licensing process, the relationship would probably not raise a conflict issue under c. 268A. Additionally, CAC members are generally free to indirectly invest even large sums of money in franchise applicants or their local competitors through mutual funds or other investment vehicles which are actively managed by disinterested third parties.

The issue of legal conflict of interest in this area often depends on the specific facts involved. CAC members with concerns regarding their vendor or investment relationships with video service providers are urged to fully apprise town counsel of all facts related to these relationships in conjunction with a request for a legal opinion on the conflict of interest question.

D. *Former Business Associations*

NECTA also seeks an opinion as to whether it would be a violation of c. 268A for CAC members -- or their immediate families -- who were *previously* employed by a license applicant or other financially interested video providers, to participate in the licensing process. Chapter 268A generally prohibits conflicting business relationships between municipal employees and third parties which run concurrent with the municipal employee's public tenure. It appears that none of the provisions of the conflict of interest law would preclude CAC members who previously had such business relationships from participating in licensing or renewal proceedings, provided that all active financial dealings between CAC members and interested third parties in connection with those relationships have ceased.

CAC members are, however, prohibited from negotiating or entering into any arrangements concerning *prospective* employment with a license applicant or any other video provider with an interest in the licensing process, as is discussed further above.²⁰

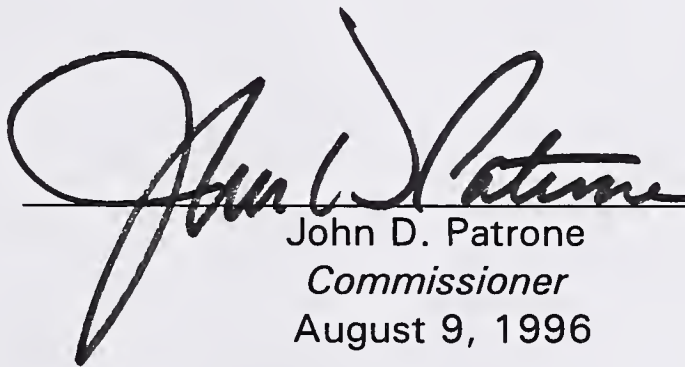
V. Conclusion.

The guidelines presented here are meant to assist municipalities and CAC's with conflict of interest problems as they face the new competitive environment. Given that no one can predict the course of technology or market forces, the guidelines are necessarily general in scope and, in many cases, will undoubtedly fall short of resolving

²⁰ M.G.L. c. 268A, § 19(a).

specific issues arising out of factual situations not contemplated by this Advisory Opinion. Many, if not most, potential conflict of interest questions should be addressed on a case-by-case basis, resulting in a legal opinion tailored to the specific facts at issue. In such instances, the Commission recommends that CAC members and other representatives of issuing authorities consult with their counsel in accordance with M.G.L. c. 268A, § 22.

Regardless, municipalities have a duty to ensure that the highest ethical standards are met as we enter the new communications era. As a result, the Commission will continue to provide assistance to municipalities in the coming years, but will also not hesitate to refer matters to the State Ethics Commission as appropriate.



John D. Patrone
Commissioner
August 9, 1996

